
No. _____

IN THE SUPREME COURT
OF THE UNITED STATES

KILUNNUN ADYDEN CHIVOSKI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

C. Renée Manes
Assistant Federal Public Defender
101 SW Main St., Suite 1700
Portland, OR 97204
(503) 326-2123

Attorney for Petitioner

QUESTIONS PRESENTED

There are significant inconsistencies in the determination of admissibility of expert witness opinions in cases involving child sexual abuse. While this Court's rulings in *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579 (1993), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), provide some guidance on when such expert testimony should be admitted, and when a preliminary gate-keeping hearing is required to ensure an adequate foundation for that testimony, the lower courts have applied those rulings inconsistently on this issue. As the admission of such expert testimony may greatly enhance a prosecution's otherwise questionable case of alleged sexual abuse, this Court should provide great guidance in the area of when a hearing under *Daubert* is required. Specifically, this petition presents the question of:

Should a district court be required to conduct a hearing under *Daubert* to consider the admissibility of expert testimony when the proffered expert admits that there is an absence of experimental psychological research in the relevant area, and there are no peer reviewed studies on the issue?

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For The Ninth Circuit

The petitioner, Kilunnun Adyden Chivoski, through his attorney, C. Renée Manes, Assistant Federal Public Defender, respectfully requests that a writ of certiorari issue to review the affirmation by the United States Court of Appeals for the Ninth Circuit on November 13, 2018.

1. Opinions Below

On November 13, 2018, the United States Court of Appeals for the Ninth Circuit affirmed petitioner's conviction for violating 18 U.S.C. § 2423(a), in an unpublished opinion. Appendix A. *United States v. Chivoski*, 742 Fed. Appx. 299 (9th Cir. 2018).

2. Jurisdictional Statement

The jurisdiction of this Court to review the judgment of the Ninth Circuit is involved under 28 U.S.C. §1254(1).

3. Statutory Provisions

Federal Rule of Evidence 702 provides:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

4. Statement Of The Case

On December 9, 2015, Mr. Chivoski was charged with two counts of transportation with intent to engage in criminal sexual activity, in violation of 18 U.S.C. § 2423(a). The charges alleged activity occurring in August of 2010, and the alleged victims were Mr. Chivoski's daughters, E.S. and A.S.

Mr. Chivoski proceeded to trial beginning on September 20, 2016, and continuing through October 3, 2016. After the close of the Government's case, the court granted a defense motion for judgment of acquittal on Count 2 regarding one daughter, A.S., but denied the motion with regard to Count 1. On October 3, 2016, the jury returned a verdict of guilty on the remaining count of the Superseding Indictment. Sentencing occurred on March 30, 2017.

5. Reasons for Granting the Writ

Courts have struggled with the admissibility of expert testimony, particularly on critical issues such as grooming, in cases involving allegations of child sexual abuse. As a result, there are significant inconsistencies in the decisions of the lower courts, providing a lack of guidance for other courts, and a lack of notice to the parties in a criminal case regarding what type of experts will be allowed, and what is necessary to support the opinions of any expert. It is therefore necessary and appropriate for this Court to provide more detailed guidance in this area.

I. Relevant Factual Background Of The Charges.

Mr. Chivoski was born in March of 1975. From his teenage years, Mr. Chivoski was homeless, itinerant, and suffered from untreated mental illness. Mr. Chivoski eventually became a father to three children, Alexander (Alex or Chance) S. (male, and the eldest), E. S. (female, one year younger), and A.S. (also female, and two years younger than E.S.).) The mother of the children was also mentally ill, and lost all legal rights to the children when they were very young.

Mr. Chivoski and his children were frequently homeless, and traveled around the United States. Sometimes the family would stay in one place for a few weeks or a month while Mr. Chivoski worked, and sometimes they would move on after only a few days. The family traveled in whatever vehicle Mr. Chivoski owned, although sometimes they had to travel by bus or by hitchhiking. In February of 2010, Mr. Chivoski purchased a Ford F350 pick-up, and the family utilized that vehicle for their travels. Over the next eight months, the family visited states including South Carolina, Virginia, Tennessee, Arizona, New Mexico, Nevada, Texas, California, Oregon and Washington – often more than once in each location. Sometimes during these travels, Mr. Chivoski and his family would sleep in their vehicle or camp, and sometimes they would stay in motels or in homes where Mr. Chivoski found work. Sometimes Mr. Chivoski met

a woman on the road, who traveled with them for a while.

In August of 2010, Mr. Chivoski and his children traveled into Oregon, and met up with a woman named Christine Johnston, who was also homeless and travelling in her own vehicle. At that time the three children were between 10 and 13 years of age; Alexander was 13; E.S. was 12, and A.S. was 10. During one leg of the trip, E.S. was riding with Ms. Johnston when the two became separated from Mr. Chivoski and the other children. Mr. Chivoski called the police to report that E.S. was missing. Shortly after E.S. was found, the three children were taken into the custody of Oregon's Department of Health and Human Services (hereinafter "DHS").

None of the three children made any allegations that they had been subjected to abuse, much less sexual abuse. Nevertheless, both Alexander S. and E.S. were immediately taken to a facility called The Children's Center by the DHS to be evaluated for abuse. While there was a brief effort to reunite Mr. Chivoski with his children a few months later, Mr. Chivoski was unable to maintain housing or employment, and returned the children to DHS. Within a few months, Mr. Chivoski had lost the right to visit with his children due to his untreated mental health issues, and his resulting conduct.

During their time in the custody of DHS, E.S. and her younger sister A.S. were placed in therapy. The explicitly stated goal of that therapy as having the girls acknowledge being the victims of sexual abuse, and identify their assailant, who was presumed to be Mr. Chivoski. Three years later, E.S. reported allegations of sexual abuse, and shortly thereafter A.S. also alleged abuse.

II. The Government's Expert on Abuse.

The Government gave late notice that it intended to introduce an expert witness, Dr. Gail Goodman. Mr. Chivoski sought a hearing pursuant to *Daubert v. Merrill Dow Pharmaceuticals*, 509 U.S. 579 (1993), and *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), prior to allowing such expert testimony. The district court declined to conduct such a hearing.

Because Mr. Chivoski was not allowed to conduct a hearing pursuant to *Daubert*, it was only on cross-examination, after hours of direct testimony, that Dr. Goodman admitted the following facts regarding the specifics of this case. First, that in all of the studies on which she relied, there was an "absence of experimental psychological research on false memory directly [for] child sexual abuse[.]" Then, there "are not studies on children's memory and suggestability about their parents." As Dr. Goodman wrote in her most recent article:

"Although scientific researchers continue to examine and identify effective ways to interview children in child sexual abuse cases, many

factors can influence children's memories and reports, some of which are still in need of research and others of which will always be difficult for researchers to study ethically. For example, there is little scientifically sound research on children's memory and suggestibility regarding their parents' actions."

Specifically on that issue, Dr. Goodman noted that there was one study in which she had participated and submitted for research, but that this was "not enough" and there "needs to be more research." That study had not been published nor subjected to peer review at the time of Mr. Chivoski's trial. Finally, Dr. Goodman admitted that there was an absence of experimental psychological research regarding whether standard therapy may result in "false memory formation for child sexual abuse."

While Dr. Goodman could opine regarding many studies, none of those studies related to the issue in this matter: whether children were suggestable regarding allegations against a parent, including regarding sexual contact; and, whether therapy sessions that lasted several years with a stated goal of obtaining a disclosure of sexual abuse in the face of repeated denials lead to a false memory of abuse. Further, Dr. Goodman could not point to any studies regarding allegation of grooming behavior by parents, as opposed to non-parental offenders.

Nevertheless, Dr. Goodman was allowed to testify regarding such issues as delayed reporting and grooming in general. The Government then utilized

Dr. Goodman's testimony to contend that various conduct undertaken by Mr. Chivoski while homeless and travelling with all three of his children constituted "grooming" for sexual abuse. That conduct included: entering houses that were not occupied and taking items including food, jewelry and alcohol; taking boxes from freight trains on two occasions, the first night getting only toy dolls but the second night getting food; allowing all three of the children to drink alcohol on one occasion; and, having sex with adult women when the children were sleeping nearby, such as sleeping in another bed in a hotel room or in the back of the pick-up truck.

III. The Courts' Struggle With The Appropriateness of Expert Testimony and *Daubert* Hearings in the Context of Sexual Abuse Cases, Particularly Regarding Allegations of "Grooming" Behavior.

Courts have struggled with the admissibility of experts in cases alleging sexual abuse, and the need for a *Daubert* hearing prior to admission of such evidence.

In several district court cases, courts have conducted *Daubert* hearings, and then determined that expert testimony, particularly relating to grooming, is not well founded or reliable and should be excluded from evidence. *See, e.g., United States v. Gonyer*, 2012 WL 3043020 (D. Maine 2012); *United States v. Schneider*, 2010 WL 3734055 (E. Dist. Penn. 2010); *United States v. Raymond*, 700 F. Supp. 2d

142 (D. Maine 2010) ("Grooming" is not specialized knowledge necessary to assist the jury and therefore fails the relevance and reliability requirement). In other cases, such as that of Mr. Chivoski, an expert opinion was allowed into evidence without any *Daubert* inquiry.

The conflict has continued at the appellate court levels. In several cases, *Daubert* hearings were required prior to the admission of any expert testimony on these issues, and at times the *Daubert* hearing led to exclusion of -- at least portions -- of the proffered opinion. See *United States v. Batton*, 602 F.3d 1191, 1200 (10th Cir. 2010) (*Daubert* hearing held); *United States v. Curtin*, 588 F.3d 993, 997 (9th Cir. 2009) (after *Daubert* hearing, defense expert was precluded from testifying on grooming and related issues). In other cases, it is unclear if any *Daubert* inquiry was held, although an expert opinion was clearly admitted. See *United States v. Hitt*, 473 F.3d 146 (5th Cir. 2006); *United States v. Hayward*, 359 F.3d 631 (3d Cir. 2004); *United States v. Romero*, 189 F.3d 576 (7th Cir. 1999). In still other cases, such as Mr. Chivoski's case, an expert's opinion is admitted without any gatekeeping hearing under *Daubert*.

The patchwork of cases leaves the courts and the parties with no clear guidelines on when expert testimony on issues relating to sexual abuse allegations should be subject to a hearing under *Daubert*, and then when that expert analysis

meets the requirements of Federal Rule of Evidence 702 for admission into evidence. And it does not appear that this Court has ever offered guidance in these particular areas. Under Supreme Court Rule 10(a), this Court should grant certiorari in order to provide additional guidance on these important questions of federal law.

CONCLUSION

For the foregoing reasons, this Court should issue a writ of certiorari to clarify the proper application of Federal Rule of Evidence 702 and the requirements of *Daubert* on the question of the admission of expert opinions in cases involving allegations of the sexual abuse of children.

DATED this 11th day of February, 2019



C. Renée Manes
Attorney for Petitioner

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IN THE SUPREME COURT
OF THE UNITED STATES

KILUNNUN ADYDEN CHIVOSKI,

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v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To
The United States Court Of Appeals
For The Ninth Circuit

CERTIFICATE OF SERVICE AND MAILING

I, C. Renée Manes, counsel of record, certify that pursuant to Rule 29.3 service has been made of the within MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR WRIT OF CERTIORARI on the counsel for the respondent by depositing in the United States Post Office, in Portland, Oregon, on this 11th day of February, 2019, first class postage prepaid, a true, exact and full copy thereof addressed to:

Kelly A. Zusman Appellate Chief Ravi Sinha Assistant United States Attorneys 1000 SW Third Avenue, Suite 600 Portland, OR 97204-2902	Noel Francisco Solicitor General of the United States Room 5614 Department of Justice 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530
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Further, one copy of the foregoing was sent via email to:

supremectbriefs@usdoj.gov

Further, the original and ten copies were mailed to the Honorable Scott S. Harris Clerk of the United States Supreme Court, through the United States Postal Service by first-class mail, addressed to 1 First Street, N.E., Washington, D.C., 20543, for filing on the 11th of February, 2019.

DATED this 11th day of February, 2019


C. Renée Manes
Attorney for Petitioner

SUBSCRIBED AND SWORN to before me this 11th day of February, 2019.




Notary Public for Oregon
My Commission Expires: March 16 2020

Appendix A

Order of the Ninth Circuit Court of Appeals of Oregon
Affirming Conviction
Dated November 13, 2018

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 13 2018

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

KILUNNUN ADYDEN CHIVOSKI,

Defendant-Appellant.

No. 17-30073

D.C. No. 3:15-cr-00450-HZ-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Marco A. Hernandez, District Judge, Presiding

Argued and Submitted October 11, 2018
Portland, Oregon

Before: FISHER, CLIFTON, and CALLAHAN, Circuit Judges.

Defendant-Appellant Kilunnun Adyden Chivoski appeals his conviction. We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

1. Chivoski challenges the admission of expert testimony by Dr. Goodman. The court's decision to admit expert testimony is reviewed for abuse of discretion. *United States v. Cazares*, 788 F.3d 956, 975–76 (9th Cir. 2015).

The district court has broad discretion in determining whether a separate pretrial *Daubert* hearing is necessary. *United States v. Alatorre*, 222 F.3d 1098, 1102 (9th Cir. 2000). Prior to trial the Government submitted the expert witness's CV and a description of her proposed testimony. After reviewing these documents the district court stated conclusions and reasoning on the record that the witness was qualified and the *Daubert* gatekeeping function satisfied. That was sufficient. A separate pretrial hearing was not required.

Chivoski also contends that Dr. Goodman lacked the requisite knowledge to testify to an issue that lacked substantial scientific research. The lack of peer-reviewed papers on an issue does not necessarily preclude the admission of expert testimony under *Daubert*. *Primiano v. Cook*, 598 F.3d 558, 564–65 (9th Cir. 2010). Dr. Goodman had conducted a study and submitted a publication on the relevant subject, and the district court did not abuse its discretion in concluding that she was qualified to testify on the subject. *Id.*

2. Chivoski argues that the district court erred when it admitted evidence of prior bad acts. We review the admitted evidence for abuse of discretion. *United*

States v. Lillard, 354 F.3d 850, 854 (9th Cir. 2003). Evidence of acts that were “inextricably intertwined” with the charged offense do not fall within the constraints of Federal Rule of Evidence 404(b). *Id.* The court did not abuse its discretion in admitting the evidence in question under the theory it was “inextricably intertwined” with the charged offense on the basis it was “necessary . . . to offer a coherent and comprehensible story regarding the commission of the crime.” *United States v. Loftis*, 843 F.3d 1173, 1177 (9th Cir. 2016).

3. Chivoski contends that the district court violated his Sixth Amendment right to present a defense when it excluded evidence as hearsay. The Sixth Amendment grants a criminal defendant the opportunity to present relevant evidence in his defense. *Crane v. Kentucky*, 476 U.S. 683, 690 (1986). This right is tempered, however, by “other legitimate interests in the criminal trial process.” *United States v. Scheffer*, 523 U.S. 303, 308 (1998). We review the exclusion of evidence for abuse of discretion. *United States v. Johnson*, 875 F.3d 1265, 1278 (9th Cir. 2017).

The exclusion as hearsay of statements made by the state trial judge during a custody hearing and of the report created by Ms. Stone in preparation for that trial was not an abuse of discretion. The statements by the judge and the transcript of the custody hearings contained statements from numerous sources potentially

creating confusion in the jury and violating the hearsay rules. Ms. Stone's report also contained multiple levels of hearsay, each of which would need to conform with a hearsay exception. The district court allowed Ms. Stone to testify on her own knowledge. The other persons cited in her report were not called to testify to their own statements and actions. The district court did not abuse its discretion when it ruled that the transcript and the report did not qualify for an exception under Federal Rule of Evidence 803 and were not admissible.

AFFIRMED.¹

¹ The Government's motion to transmit physical evidence under seal (Dkt. No. 21) is denied.

Appendix B

Judgment in United States District Court
For the District of Oregon, Case No. 3:15-cr-000450-HZ
Dated April 7, 2019

AO 245B

Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 11/2016)
Sheet 1**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON****UNITED STATES OF AMERICA**

Plaintiff,

v.

KILUNNUN ADYDEN CHIVOSKI

Defendant.

JUDGMENT IN A CRIMINAL CASE

Case No.: 3:15-CR-00450-1-HZ

USM Number: 551-37-5772

C. Renee Manes,
Defendant's AttorneyRavi Sinha and Jane H. Shoemaker,
Assistant U.S. Attorney**THE DEFENDANT:**☒ was found guilty on count ONE (1) of the Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of the following offense(s):

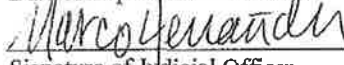
<u>Title, Section & Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number</u>
18 USC § 2423(a) - Transportation with Intent to Engage in Criminal Sexual Activity	Beginning on or about 7/23/2010 and continuing until 8/10/2010	1s

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant was acquitted of Count TWO of the Superseding Indictment and is discharged as to such count(s).☒ Counts ONE and TWO of the Indictment are dismissed on the motion of the United States.☒ The defendant shall pay a special assessment in the amount of \$100.00 for Count(s) ONE payable immediately to the Clerk of the U.S. District Court. (See also the Criminal Monetary Penalties Sheet.)**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

March 30, 2017

Date of Imposition of Sentence


Signature of Judicial Officer

Marco A. Hernandez, U.S. District Judge

Name and Title of Judicial Officer

April 7, 2017

Date

AO 245B

Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 11/2016)
Sheet 2 - Imprisonment

DEFENDANT: KILUNNUN ADYDEN CHIVOSKI
CASE NUMBER: 3:15-CR-00450-1-HZ

Judgment-Page 2 of 8

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of **THREE HUNDRED (300) months.**

☒ The court makes the following recommendations to the Bureau of Prisons:

1. That the defendant be incarcerated in a facility with RDAP and Mental Health treatment.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the custody of the United States Marshal for this district:

☐ at _____ on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before _____ on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

The Bureau of Prisons will determine the amount of prior custody that may be credited towards the service of sentence as authorized by Title 18 USC §3585(b) and the policies of the Bureau of Prisons.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By: _____
DEPUTY UNITED STATES MARSHAL

AO 245B

Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 11/2016)

Sheet 3 - Supervised Release

DEFENDANT: KILUNNUN ADYDEN CHIVOSKI
CASE NUMBER: 3:15-CR-00450-1-HZ

Judgment-Page 3 of 8

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **LIFE**.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

AO 245B

Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 11/2016)

Sheet 3A - Supervised Release

DEFENDANT: KILUNNUN ADYDEN CHIVOSKI

Judgment-Page 4 of 8

CASE NUMBER: 3:15-CR-00450-1-HZ

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

AO 245B

Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 11/2016)

Sheet 3D - Supervised Release

DEFENDANT: KILUNNUN ADYDEN CHIVOSKI

Judgment-Page 5 of 8

CASE NUMBER: 3:15-CR-00450-1-HZ

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a substance abuse treatment or alcohol abuse treatment program, which may include inpatient treatment, and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The program may include urinalysis testing to determine if you have used drugs or alcohol. You must not attempt to obstruct or tamper with the testing methods.
2. You must submit to substance abuse testing to determine if you have used a prohibited substance. Such testing may include up to twelve (12) urinalysis tests per month. You must not attempt to obstruct or tamper with the testing methods.
3. You must not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption, except with the prior approval of the probation officer.
4. You must not go to, or remain at any place where you know controlled substances are illegally sold, used, distributed, or administered without first obtaining the permission of the probation officer. Except as authorized by court order, you must not possess, use or sell marijuana or any marijuana derivative (including THC) in any form (including edibles) or for any purpose (including medical purposes). Without the prior permission of the probation officer, you must not enter any location where marijuana or marijuana derivatives are dispensed, sold, packaged, or manufactured.
5. You must submit your person, property, house, residence, vehicle, papers, or office to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.
6. You must meet any legal obligation to support or make payment toward the support of any person, including any dependent child, the co-parent or caretaker of a dependent child, or a spouse or former spouse.
7. You must participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).
8. You must take all mental health medications that are prescribed by your treating physician.
9. You must not have direct contact with any child you know or reasonably should know to be under the age of 18, including your own children, without the permission of the probation officer. If you do have any direct contact with any child you know or reasonably should know to be under the age of 18, including your own children, without the permission of the probation officer, you must report this contact to the probation officer within 24 hours. Direct contact includes written communication, in-person communication, or physical contact. Direct contact does not include incidental contact during ordinary daily activities in public places.
10. You must not communicate, or otherwise interact, with the victims identified in the presentence report as E.S and A.S. , either directly or through someone else, without first obtaining the permission of the probation officer.
11. You must not go to, or remain at, any place where you know children under the age of 18 are likely to be, including parks, schools, playgrounds, and childcare facilities.
12. You must not go to, or remain at, a place for the primary purpose of observing or contacting children under the age of 18.
13. You must not work in any type of employment without the prior approval of the probation officer.
14. You must participate in a sex offense-specific assessment.

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Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 11/2016)
Sheet 3D - Supervised Release

DEFENDANT: KILUNNUN ADYDEN CHIVOSKI
CASE NUMBER: 3:15-CR-00450-1-HZ

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15. You must participate in a sex offense-specific treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).
16. You must submit to periodic polygraph testing at the discretion of the probation officer as a means to ensure that you are in compliance with the requirements of your supervision or treatment program.

AO 245B

Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 11/2016)

Sheet 5 - Criminal Monetary Penalties

DEFENDANT: KILUNNUN ADYDEN CHIVOSKI

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CASE NUMBER: 3:15-CR-00450-1-HZ

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments set forth in this judgment.

	<u>Assessment</u> <u>(as noted on Sheet 1)</u>	<u>Fine</u>	<u>Restitution</u>	<u>TOTAL</u>
<u>TOTALS</u>	\$100.00	\$0.00	\$0.00	\$ 100.00

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid in full prior to the United States receiving payment.

<u>Name of Payee</u>	<u>Total Amount of Loss¹</u>	<u>Amount of Restitution</u> <u>Ordered</u>	<u>Priority Order or Percentage</u> <u>of Payment</u>
	\$	\$	
<u>TOTALS</u>	\$	\$	

☐ If applicable, restitution amount order pursuant to plea agreement: \$_____.

☐ The defendant must pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that

☐ The interest is waived for the ☐ fine and/or ☐ restitution.

☐ The interest requirement for the ☐ fine and/or ☐ restitution is modified as follows:

Any payment shall be divided proportionately among the payees named unless otherwise specified.

¹ Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994, but before April 23, 1996.

AO 245B

Judgment in a Criminal Case - DISTRICT OF OREGON CUSTOMIZED (Rev. 11/2016)

Sheet 6 - Schedule of Payments

DEFENDANT: KILUNNUN ADYDEN CHIVOSKI

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CASE NUMBER: 3:15-CR-00450-1-HZ

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment² of the total criminal monetary penalties shall be as follows:

- A. ☒ Lump sum payment of \$100.00 due immediately in full.
☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, or ☐ E below; or
- B. ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ E below); or
- C. ☐ If there is any unpaid balance at the time of defendant's release from custody, it shall be paid in monthly installments of not less than \$_____, or not less than 10% of the defendant's monthly gross earnings, whichever is greater, until paid in full to commence immediately upon release from imprisonment.
- D. ☐ Any balance at the imposition of this sentence shall be paid in monthly installments of not less than \$_____, or not less than 10% of the defendant's monthly gross earnings, whichever is greater, until paid in full to commence immediately.
- E. ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the Court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties, including restitution, shall be due during the period of imprisonment as follows: (1) 50% of wages earned if the defendant is participating in a prison industries program; (2) \$25 per quarter if the defendant is not working in a prison industries program.

It is ordered that resources received from any source, including inheritance, settlement, or any other judgment, shall be applied to any restitution or fine still owed, pursuant to 18 USC § 3664(n).

All criminal monetary penalties, including restitution, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of Court at the address below, unless otherwise directed by the Court, the Probation Officer, or the United States Attorney.

Clerk of Court
 U.S. District Court - Oregon
 1000 S.W. 3rd Ave., Ste. 740
 Portland, OR 97204

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number**Defendant and Co-Defendant****Names**

(including Defendant number)

Total Amount**Joint and Several Amount****Corresponding Payee, if appropriate**

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court costs:

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

² Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.